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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
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July 26, 1974

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TO: All Commissioners and Alternates
FROM: Charles R. Roberts, Executive Director

SUBJECT: ANALYSIS OF RECENT AMENDMENTS TO ASSEMBLY BILL 2040 (Knox)
(For Commission consideration on August 1, 1974)

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This analysis of the most recent amendments to Assembly Bill 2040 (Knox) has been prepared pursuant to the Commission's direction at the meeting of July 18, 1974. A copy of the amended legislation is also included. The analysis focuses on the amendments as they relate to the Commission's comments contained in the letter to Assemblyman Knox and Senator Marks.

Previous memoranda to the Commission on earlier versions of Assembly Bill 2040 are dated November 30, 1973, and April 29, 1974.

"1. The Bay As a State-Wide Resource. San Francisco Bay is a resource of state-wide importance. This fact has been recognized in the composition of the Commission, which includes representatives of various State agencies and the general public, and in the State legislation that created the Commission. Furthermore, in the early 1960's, local government in the Bay Region could have acted on unrestricted Bay fill. But, though there were long discussions at meetings of the existing association of local governments, nothing was done. Therefore, a regional planning agency with a governing board composed entirely of appointed local officials, which may be subject to the same political pressures that led to indiscriminate filling in the past, should not be entrusted with the future of San Francisco Bay or given the power to change the San Francisco Bay Plan."

Changes. The bill now provides that the ultimate governing board of the agency will consist of 50 members, half of which will be directly elected from single member districts throughout the nine-county Bay Region. One of the first tasks of the planning agency after it came into existence in January of 1975 would be to determine the boundaries of the districts. The election would be held in June, 1976, which would be the first general election subsequent to the creation of the agency. In the interim period between January, 1975, and June, 1976, the agency board would be composed entirely of appointed local officials. BCDC, however, could not become part of the new agency until January, 1977, after the election had taken place.

"2. Priority of Bay Conservation and Development. The bill does not give sufficiently high priority to the conservation and development of San Francisco Bay. Section 66191 states that the regional plan to be prepared by BAPA shall include at least four elements: environmental quality; transportation; land use; and resource management. Though forests, rivers, soils, fish and wildlife, and other natural resources are referred to, San Francisco Bay, the single most important natural resource in the region, is not mentioned at all. Moreover, the findings and declarations of the McAteer-Petris Act, which recognize the importance of the Bay, are not included in the bill. Nor is

the regional plan required to be consistent with the McAteer-Petris Act and the Bay Plan, though it must meet standards set under other State legislation for air quality, water quality, and solid waste management."

Changes. A new Section 66109 has been added to the bill reaffirming the Legislature's findings and declarations of policy with regard to San Francisco Bay contained in the McAteer-Petris Act. In addition, the "resources management plan," which is part of the regional plan to be prepared by the agency, now must include "bays." And under Section 66191(d), the San Francisco Bay Plan is the sole and exclusive plan for the conservation and development of San Francisco Bay, and can only be amended and altered pursuant to the provisions of the McAteer-Petris Act. The staff has recommended to the author that the bill should go a step further and make the plan for San Francisco Bay a separate element of the regional plan. This is to ensure that Bay planning has the high priority it deserves because San Francisco Bay is the single most important natural resource in the region. Assemblyman Knox has indicated that such an amendment would be acceptable.

"3. Potential Conflict with the McAteer-Petris Act. Both the San Francisco Bay Plan and the McAteer-Petris Act were adopted after a lengthy comprehensive planning process and often arduous public debate. As a result, important procedural guarantees were written into the McAteer-Petris Act with regard to amendments to policies and standards in the Bay Plan. Under the law, these require a two-thirds vote and ninety days notice to the public.

"Under Assembly Bill 2040, these procedural guarantees could be lost. The BAPA regional plan and amendments to it are to be implemented through ordinances adopted by a majority vote of the agency board. The plans of all 'local agencies,' of which the Commission is one by definition under Section 66121 and 66115, must be consistent with these ordinances. The agency also has the power to order a local agency, including the Commission, to cease and desist from enforcing those portions of its plan that are not consistent with the ordinances enacted to carry out the regional plan. In short, BAPA, by majority vote and less than ninety days notice, could render unenforceable a portion of the Bay Plan that could otherwise be changed only by a two-thirds vote of the Commission after ninety days notice."

Changes. All cease and desist powers in the bill have been deleted, and the new agency would exercise only the existing powers of the agencies to be incorporated. In addition, Section 66191(d), referred to in the discussion under the previous heading, makes it clear that the Bay Plan can be amended only under the provisions of the McAteer-Petris Act.

"4. Composition of the Commission. The Commission is presently composed of representatives from the Federal Government, the State, local governments around the Bay, and the general public. The combination has worked well, and as a 'winning team,' it should not be broken up."

Changes. The new governing board, which would supplant the Commission, would be composed of half elected representatives and half appointed local officials. Though not yet part of the bill, the author has indicated that an amendment would be acceptable that would allow the governing board to be expanded to include the five commissioners from State agencies when the governing board sits as the ex-officio BCDC.

"5. Workload. The governing board of BAPA would not only assume the Commission's planning functions, but also its permit and enforcement responsibilities as well. Both of the latter, but particularly the permits, consume considerable time. It seems unlikely that part-time councilmen and supervisors would be able to devote the necessary time to a regional agency with responsibilities as broad as BAPA's. As a result, less time would be devoted to planning and regulating San Francisco Bay."

Changes. There has been no change in the bill on this point. Both the directly elected and the appointed members of the governing board would serve part-time.

"6. The Attorney General. Under Assembly Bill 2040, the Commission would lose the services of the California Attorney General, probably immediately and in any event at the time the BAPA board became the ex-officio BCDC. The Commission believes that a key factor in its success has been its representation by the Attorney General. Not only has the quality of the individuals representing the Commission been unusually high, but also the Attorney General, by virtue of his position as the chief law enforcement officer of the State, has been in a unique position to present to courts the public perspective on legal issues affecting the Commission."

Changes. Section 66240 of the bill has been amended to allow the agency board to contract with the Attorney General for "appropriate legal services."

"7. Need for Further Study. Though further study can be an excuse for not making a decision, including BCDC in BAPA is giving up a working solution for an unknown. Before BCDC is absorbed into any other agency, there should be an initial study and a report to the Legislature on the consequences of merging BCDC with other agencies. Such a study might be prepared by an agency created especially for that purpose, similar to the study commission that led to the creation of BCDC, and the study should include consideration of whether BCDC should become part of a regional planning agency, a State-wide coastal planning agency, or a State agency responsible for environmental control."

Changes. There is no provision in the bill at present calling for a study and a report to the Legislature on the consequences of merging BCDC with other agencies. The author has indicated he feels such a requirement would be inconsistent with the basic intent of the bill, which is to establish a regional planning agency as soon as possible.

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